

Service Date: December 9, 1996

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of )	UTILITY DIVISION
U S WEST Communications, Inc. to )	
Restructure its Carrier Common Line )	DOCKET NO. D96.4.70
Charges for Intrastate access. )	ORDER NO. 5925a

**FINAL ORDER**

**Introduction and Procedural Background**

1. On April 26, 1996 U S WEST Communications, Inc. (USWC) filed to restructure its carrier common line (CCL) charges for intrastate access. The CCL charge is the non-traffic sensitive (NTS) rate element which access customers pay to USWC for using local loops to connect toll calls from end-users to USWC's network. USWC stated in its filing that the restructure makes the CCL rate structure more consistent with the NTS nature of the costs that the rate is designed to recover and better reflects the role that CCL revenue plays to support basic residential telephone rates. USWC further stated that the proposal is revenue neutral overall, although individual carriers may realize slight differences in billing due to their traffic patterns.

2. Under USWC's existing tariff, interexchange carriers pay CCL charges to originate and terminate intrastate toll on USWC's Montana network on a per minute-of-use (MOU) basis. Carrier access charges have several rates including the carrier common line charge. USWC's charges are 1.53¢ per originating MOU and 2.31¢ per terminating MOU. The proposed restructure would permit USWC to replace the per MOU computation with a flat-rated charge reflecting USWC's estimated CCL revenue requirement. USWC's filing proposed a rate of \$4.356 per residence access line which would be billed according to each carrier's market share. Market share would be calculated on the basis of MOUs.

3. Both AT&T Communications of the Mountain States (AT&T) and MCI Telecommunications Corporation (MCI) filed timely notice with the Commission opposing the proposed restructure of rates. AT&T asked the Commission to reject USWC's filing or, alternatively, to suspend the filing and conduct a hearing. MCI also requested that the Commission suspend the filing pending a hearing.

4. On June 18, 1996, the Commission voted to suspend the filing and set the matter for hearing. The Commission issued a Notice of Application and Opportunity for Comments or Intervention on June 28, 1996. Intervention was granted to AT&T, MCI, the Montana Telephone Association, the Montana Consumer Counsel, Citizens Telecommunications Company of Montana, and PTI Communications.

5. According to the amended Procedural Schedule in this matter, a hearing was conducted on August 13, 1996 to address issues raised by the intervenors, including: (1) whether USWC's proposed restructure of CCL charges is anticompetitive; (2) whether the proposal is revenue neutral and supported by sufficient information from USWC; (3) whether additional audit and verification procedures are necessary to verify the accuracy of the proposed charge, if approved; and (4) other relevant issues regarding the terms or conditions of the proposal.

6. USWC has made similar CCL restructure filings in several other states in its operating region. At the time of hearing, the Arizona filing was under study after a suspension, the Iowa filing had been withdrawn, and Colorado had established a procedural schedule and the matter was pending.

### **Summary of the Arguments**

7. AT&T presented the direct and rebuttal testimony of Ms. Patricia Parker. Dr. Barbara Wilcox testified on behalf of USWC. MCI and AT&T were the only intervenors that participated in cross-examination of witnesses at the hearing. MCI and AT&T filed joint post-hearing briefs opposing USWC's CCL restructuring proposal. None of the other intervenors filed post-hearing briefs.

USWC

8. USWC claims that the proposed rate restructuring is more consistent with the NTS nature of the costs recovered, which are local loop costs.<sup>1</sup> USWC further asserts that it is a better reflection of the support for basic residential rates.

9. USWC gave three reasons for its request to restructure CCL charges: (1) CCL charges should be flat-rated because they collect fixed NTS costs; (2) because the charge serves to promote universal service, it is linked to the number of residential lines; and (3) the market share approach for recovering total charges is competitively neutral. USWC stated that it has a continuing need for universal service support during the transition to a competitive telecommunication market and this restructuring proposal would maintain that support.

10. USWC also contends that the proposed restructuring will protect carriers by possibly decreasing their payments. USWC further argues that CCL charge restructuring is consistent with the Telecommunications Act of 1996 (1996 Act) Pub. L. No. 104-104, 110 stat. 56, *codified at* 47 U.S.C. § 151, *et seq.*

11. USWC provided testimony that it could accommodate specific problems identified by AT&T by modifying the \$4.356 factor, for example, if extended area service (EAS) expands. Although USWC's witness stated that USWC could revisit the \$4.356 factor when local service is resold, she also stated that the factor would not be modified when USWC lost lines to a resale competitor.

12. To address concerns about verification of proper billing, USWC would provide quarterly reports to carriers on the total volumes used to compute the bulk bill associated with the CCL restructure, giving carriers the opportunity to verify this data.

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<sup>1</sup> USWC estimates NTS costs of \$100,127,000. This annual amount is for the state of Montana and derives from USWC's 1995 ARMIS 43-04 report (USWC Response PSC-6(c)).

Although uncertain as to what data the Commission would receive, USWC's witness testified that a carrier would not receive another carrier's specific market share data.

AT&T and MCI

13. AT&T and MCI expressed a number of concerns about USWC's CCL restructuring proposal, claiming that it is anticompetitive and discriminatory, that it is not cost based, and that it creates barriers to market entry and is thus inconsistent with the 1996 Act. AT&T argued that USWC's proposal is anticompetitive in the manner in which it locks in revenues for USWC. AT&T asserted, as an example, that if a carrier were to take access service from a USWC competitor, the billing to the carrier would not decline. AT&T also expressed its concern that EAS expansion may unclearly impact the billing and that any subsequent sale of exchanges by USWC may adversely impact carriers.

14. AT&T asserted that other carrier access charge rate elements should be based on total service long-run incremental costs (TSLRICs). AT&T provided testimony that maintaining the CCL charge is anticompetitive when any carrier access charge rate element is priced above TSLRICs and that maintaining the CCL charge serves as a barrier to toll market entry.<sup>2</sup>

15. AT&T's witness further testified that USWC's proposal is not cost based and is ostensibly assessed as an implicit subsidy. She also emphasized that it is unclear how USWC uses any such revenues. She later asserted that the charge is a pure subsidy that is locked in for USWC because there is no evidence that residential service is priced below cost (TSLRIC) in Montana.

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<sup>2</sup> In response to a late-filed exhibit request asking how it would recover the restructured charge, AT&T stated it had not made a pricing decision on how it would recover any restructured CCL charge from its customers, and enumerated three of the four factors on which it asserts to base its nationwide and global pricing. Those factors largely involve market conditions and costs.

16. AT&T also argued that USWC's CCL proposal is inconsistent with the 1996 Act as the FCC will address carrier access charge reform. Thus, it is AT&T's position that the charge should be eliminated, not restructured, and all remaining access elements priced at TSLRIC. In this regard, AT&T argued that USWC's testimony in this docket is inconsistent with other USWC testimony before Great Britain's OFTEL.

17. In rebuttal testimony, AT&T argued that CCL restructuring does not benefit carriers. AT&T noted the anticompetitive nature of USWC's proposal by pointing out that new entrants would pay no CCL charges for at least three months. AT&T further stated that there is no USWC study that indicates the CCL charge subsidizes residential rates and renewed its argument that a USWC cost of service study should be immediately opened.

#### **Findings of Fact and Commission Decision**

18. To allocate CCL charges under its proposal, USWC calculated an initial CCL "factor" by dividing the total present revenue derived from CCL charges<sup>3</sup> by the total present number of residential lines. USWC used total revenue from CCL charges during 1995 which was \$12,398,019 and 237,191 residential access lines to calculate the factor. This factor, determined to be \$4.356, is USWC's estimate of the flat-rate amount needed per month for each residential line in order to restructure the CCL charge on a revenue neutral basis.

19. After the initial test period, the factor remains constant and is used as the basis of the quarterly calculations to determine each carrier's flat monthly rate. The base period annual revenue figure, \$12,398,019, is not used again nor is the initial number of residence lines that was used to compute the factor. Each quarter, USWC will recalculate a new average number of residence access lines over a six-month period, multiply that number times the factor to determine the new CCL revenue

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<sup>3</sup> Total revenue includes revenue imputed to USWC for its market share.

recovery to be collected, and apportion this total amount among carriers based on a new calculation of market share. The total revenue requirement is allocated to carriers and imputed to USWC based on their respective share of the intrastate toll market determined on a per MOU basis.

20. Under USWC's proposal, two variables can affect the allocation for each carrier and the imputation to USWC--the minutes of use market share of each carrier and the total number of residential lines.

21. As a matter of policy the Commission finds merit in preserving a source of funding for existing USWC revenue requirements that may associate with embedded costs. USWC's CCL restructuring proposal is consistent with this policy goal because it retains compensation for the use of the ubiquitous local switched network. Although business lines are not included in the restructuring proposal, CCL revenues that USWC presently receives from business lines would be preserved when USWC loses business customers to facility-based carriers because USWC will continue to count switched access MOUs in the market share calculations. The Commission approves USWC's restructuring proposal subject to conditions as detailed herein.

22. The Commission declines to adopt AT&T's recommendation that CCL charges be eliminated. This argument to eliminate the CCL charge begs the question where the associated revenue requirement would be collected. Even with the recovery of NTS and common costs through a CCL charge, AT&T's proposal raises rebalancing and restructuring questions -- questions not limited to stranded costs and the opportunity to earn a lawful rate of return. Thus, AT&T's recommendation is not sound for a regulated entity such as USWC with carrier-of-last-resort obligations.

23. Moreover, the future of the interstate CCL charge is being addressed by the FCC in both the Universal Service and Access Reform proceedings which it is statutorily required to complete by May 1997.<sup>4</sup> Because the intrastate CCL charge

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<sup>4</sup> The 1996 Act directed a Federal-State Joint Board to adopt new universal service support mechanisms that are specific, predictable, and sufficient to advance principles identified in the 1996 Act. The Federal-State Joint Board released its

support mechanism is patterned after the federal counterpart, it is more appropriate to address these sorts of issues on an intrastate level after the FCC has completed its work on universal service and access reform.<sup>5</sup> Nonetheless, our decision today mirrors some

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Recommended Decision on Universal Service in CC Docket No. 96-45 on November 8, 1996, proposing rules and policies that are intended to create an effective universal service support system to ensure that the goals of affordable service and access to advanced services are met by means that enhance competition without distorting competition.

<sup>5</sup> In the Federal-State Joint Board recommendations to the Federal Communications Commission (FCC) concerning CCL charges in Docket No. 96-45, the Joint Board concluded that the existing payment structure for recovery of subscriber loop costs (the Subscriber Line Charge (SLC) and the residual CCL charges) is inconsistent with the 1996 Act because such payments must be equitable and nondiscriminatory. The Joint Board recommends that such supports be removed from the access charge regime and instead recovered from the new federal universal service support mechanism. Regarding CCL charges, the Joint Board concluded that the existing usage-sensitive CCL charge structure is economically inefficient and has specifically recommended that the FCC change the current CCL rate structure so that

of the Joint Board conclusions and is consistent with the general tone of the *Recommended Decision*.

24. AT&T also argued that USWC's restructuring is anticompetitive because it treats existing carriers and new entrants discriminatorily. AT&T contends that new entrants will benefit from a lag in determining their market share under the proposal. New carriers begin with a zero market share and are not allocated costs until the end of the quarter following their entry into the market. However, just as a new carrier is not immediately allocated costs, an existing carrier is not allocated costs based on current MOUs. The short lag time that comes with the new method of allocation does not discriminate against new entrants and no evidence was presented that it unfairly discriminated against existing carriers. Although imperfect, historical data is adequate and sufficient for both new and old carriers.

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LECs are no longer required to recover the NTS cost of the loop from interexchange carriers on a traffic-sensitive basis, but rather on a flat-rated basis. *Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, ¶¶ 753-54 (released November 8, 1996).*



25. AT&T also argued that carrier access prices in excess of TSLRICs are anticompetitive. The source and destination of cross subsidies, however, involves a comprehensive analysis which is not part of this Docket.<sup>6</sup>

26. USWC's initial brief characterizes as ludicrous AT&T's allegation that USWC should have submitted a cost study in this docket to maintain the current variable CCL charge. USWC current CCL charges were established pursuant to Commission Order 5535g in Docket No. 90.12.86 which reflects USWC evidence on revenues, MOUs, and costing methods dating to about 1989. Thus, within the narrow confines of this docket, USWC's rates are cost based.

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<sup>6</sup> See, e.g., Gerald Faulhaber, *Cross-subsidization: pricing in Public Enterprises*, 65 American Econ. Rev. 966-77, an often-cited source for the necessary and sufficient conditions for cross subsidies to exist. The relevance of stand alone costing is also discussed in the FCC's August 8, 1996 Interconnection Order at ¶¶ 333 and 698. First Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, et al., FCC 96-325, 61 Fed. Reg. 45475 (Aug. 19, 1996). See also Robert J. Graniere, *Almost Second-Best Pricing For Regulated Markets Affected By Competition*, NRRI 96-10 (March 1996), Ohio St. Univ., Columbus, Ohio.

27. USWC has used different costing methods for different purposes in the past, however. In this docket, USWC relies on long-run incremental costs (LRICs) when alleging residential service is priced below cost (USWC Data Response PSC-6(b)). In contrast, USWC's private line restructure filing refers to a "TSLRIC COST MODEL."<sup>7</sup> Although it may be consistent with the 1996 Act, parties inquired into how USWC uses total element long-run incremental costs (TELRIC) in the Commission's depreciation docket.<sup>8</sup> This is not just a policy issue as LRIC and TSLRIC cost methods differ as would their cost results for the same service. By using different costing methods for different purposes, USWC's pricing may run afoul of one of regulation's central tenets - avoiding undue price discrimination.

28. AT&T argued that the restructured CCL factor (\$4.356 per residential line) should be revisited with any expansion of EAS. The Commission agrees that because EAS may impact the Montana intrastate toll market, it is appropriate to address the impact on CCL revenues in an EAS proceeding. Thus, any docket that considers EAS expansion must include as an issue the consideration of the CCL factor.

29. Given the possible EAS expansions presently before the Commission, the consideration of such impacts should be consolidated to the extent possible. It would not be efficient to revisit the factor's value for each separate EAS expansion. This is not, however, a blank check to defer consideration of such impacts. Further, if it makes sense to revisit the factor, it must also make sense to revisit the MOU market shares on which the allocation of the resulting and lower total costs is based.

30. Another event that would require a review of the CCL factor is any subsequent sale of exchanges by USWC. Any such docket must include the review of the factor as an issue for consideration.

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<sup>7</sup> USWC Docket No. N96.8.146 involves private line restructuring. A September 10, 1996 letter to the Commission staff is the source of this TSLRIC reference.

<sup>8</sup> *In the Matter of the Application of U S WEST Communications, Inc. to Increase the Rates for Residential Local Exchange Services to Reflect an Increase in Depreciation Rates.*, No. D96.8.131, Data Response ATT-13.

31. Another issue relating to the factor is whether the number of residential lines used to calculate the product along with the factor ought to decrease with facility-based bypass and with the resale of residential lines. Although USWC provided testimony that it will lower the number of lines included in the calculation with facility-based bypass, it did not make a similar concession with regard to resale. The Commission will entertain a recalculation of the factor upon facility-based bypass. For the present, the Commission will not require a change in USWC's residential line count for resold lines.

32. Further, CCL pricing issues and revenue collection will arise and must be considered with USWC's rate-rebalancing filing. For example, if the portion of USWC's revenue requirement collected by CCL charges declined and other rates increased, then the factor and the total revenues collected by restructuring must change in order to avoid double collecting such revenue requirements.

33. USWC testified that it has experienced a 10 percent annual growth in MOUs and a three percent annual growth in the number of residential access lines. As a simple matter of mathematics, with such growth USWC's MOUs must have nearly doubled since 1989. Since this growth in MOUs greatly exceeds the growth rate for residential lines, the question arises whether USWC's actual CCL revenues greatly exceed the need based on the currently approved allocated cost of service. USWC's CCL revenue growth will be considered in any USWC alternative form of regulation (AFOR) or rate-rebalancing docket.

34. The Commission concludes that it is appropriate to require USWC to file market data with the interexchange carriers. The Commission agrees with USWC that this quarterly data should be protected from other carriers. However, it is appropriate to submit such data to the Commission under USWC's generic protective order for proprietary information.

#### **CONCLUSIONS OF LAW**

1. The applicant, U S WEST Communications, Inc., is a corporation providing regulated telecommunications services within the State of Montana and, as such, is a public utility within the meaning of §§ 69-3-101, and-803(3), MCA.

2. The Montana Public Service Commission properly exercises its jurisdiction in this docket pursuant to §§ 69-3-102, and -302, MCA.

3. The Commission has provided adequate public notice and opportunity for a public hearing in this matter, pursuant to the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

4. The Commission is charged with the responsibility of maintaining just, reasonable and nondiscriminatory rates. Section 69-3-807(1), MCA. Without a full cost-of-service study to review CCL charges and other rates, it is not appropriate to address whether the CCL charges remain just and reasonable when the rates essentially remain the same, but it is appropriate to review CCL rates for discriminatory impact in certain circumstances. These circumstances include, but are not limited to, expansion of EAS, resale of local service, and future sales of exchanges.

### **ORDER**

1. Applicant's tariff filing requesting restructure of carrier common line charges is approved, subject to the conditions identified herein.

2. USWC is directed to file quarterly market data used to calculate the market share of each entity that is billed for or imputed CCL charges. This data must be filed concurrently with interexchange carrier billing.

Done and dated this 25th day of November, 1996 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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NANCY McCaffree, Chair

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DAVE FISHER, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.